



FH  
[REDACTED]

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

**DECISION**  
Case #: FCP - 177077

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**PRELIMINARY RECITALS**

Pursuant to a petition filed on September 29, 2016, under Wis. Admin. Code § DHS 10.55, to review a decision by the Milwaukee Enrollment Services regarding Medical Assistance (MA), a hearing was held on January 26, 2017, by telephone.

The issue for determination is whether the agency correctly seeks to terminate petitioner's MA due to excess assets.

There appeared at that time the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED]

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, WI 53703

By: [REDACTED], HSPC Sr.  
Milwaukee Enrollment Services  
1220 W Vliet St  
Milwaukee, WI 53205

**ADMINISTRATIVE LAW JUDGE:**

Kelly Cochrane  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. Petitioner completed a renewal for EBD MA on 8/18/16.

3. Petitioner had a life insurance policy as of October 2015 with a face value of \$13,568.48 and a cash surrender value of \$9347.73.
4. On August 26, 2016 the agency issued a notice to petitioner stating that his EBD MA was denied due to excess assets.

### **DISCUSSION**

A person cannot receive medical assistance if her available assets exceed \$2,000. Wis. Admin. Code, §DHS 103.06(1)(a); Wis. Stat. §§49.46(1) and 49.47(4)(b). The regulation in Wis. Admin. Code, §DHS 103.06(10), provides the following instructions on determining whether a life insurance policy is considered an asset:

The cash value of a life insurance policy shall be considered an asset, except that for SSI-related persons it is an asset only when the total face value of all policies owned by the person exceeds \$1,500. In this subsection, "cash value" means the net amount of cash for which the policy could be surrendered after deducting any loans or liens against it, and "face value" means the dollar amount of the policy which is payable on death.

Similarly, the *Medicaid Eligibility Handbook*, §16.7.5 (available online at <http://www.emhandbooks.wisconsin.gov/meh-ebd/meh.htm>) which provides the policy interpreting this provision states:

Count the cash value of all life insurance policies. For persons 65 years old or older, blind, or disabled, count it only when the total face value of all policies, including riders and attachments, owned by each person exceeds \$1,500. Do this calculation for each elderly, blind, or disabled person. In determining the face value, do not include any life insurance which has no cash value.

Face value is the basic death benefit of the policy including the value of riders and other attachments.

Cash value means the net amount of cash for which the policy could be surrendered after deducting any loans or liens against it.

Workers should enter the total of the face value plus any riders or other attachments as the "Face Value" on the Life Insurance Assets page.

The petitioner's assets include an American General life insurance policy with a cash surrender value of \$9347.73. Petitioner did not dispute the existence or value of this policy, but rather requests that this administrative law judge and the agency set aside the previously stated laws and policy.

Unfortunately for petitioner I cannot ignore the laws set forth by the elected legislators nor the duly enacted policy in accordance with the law. It is the long-standing position of the Division of Hearings & Appeals that the Division's hearing examiners lack the authority to render a decision on equitable arguments. See, Wisconsin Socialist Workers 1976 Campaign Committee v. McCann, 433 F.Supp. 540, 545 (E.D. Wis.1977). This office must limit its review to the law as set forth in statutes, federal regulations, and administrative code provisions.

Petitioner's wife was provided with options at hearing as to how to convert the life insurance policy so that it would not be considered an available asset. If she converts/lowers the assets she may always

reapply. She is reminded that there was another life insurance policy that was not verified on this case and she will have to provide verification of that one too if she decides to reapply.

### **CONCLUSIONS OF LAW**

The agency correctly seeks to terminate petitioner's MA due to excess assets.

**THEREFORE, it is**

### **ORDERED**

That the appeal is dismissed.

### **REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

### **APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 27th day of January, 2017

\s \_\_\_\_\_  
Kelly Cochrane  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on January 27, 2017.

Milwaukee Enrollment Services  
Office of Family Care Expansion  
Health Care Access and Accountability  
[REDACTED]@mychoicefamilycare.com